Your screed about signal reliability doesn't even rise to the level of a bad joke. Every night I have to fight through a snowstorm of obfuscation. Your reception is little better than the rabbit ears I first encountered in 1948. I've lost your signals more times than I care to count. During the Word Trade Center disaster, I lost your signal too.

Your description of Peter Price's experience is, as you well know, somewhat selective. Even if, arguendo, it had a germ of truth, please note that Liberty has been at this for a few years now, and that many of its key employees gained their experience at a company called ... can it be? ... Time Warner. And since you want to count publishing or entertainment failures, don't forget the substantial number in your own offices. By the way, who the hell appointed Crain's the arbiter of good companies and bad? I'll make my own decisions, thank you.

You are also [willfully?] in error on the matter of regulation. As to the FCC, you and I know how toothless its enforcement procedures have been and continue to be. Further, you and I know Time Warner's tawdry record of regulation evasions. You seem to raise the regulation flag only when wishing to appear a symbol of rectitude.

Programming? At last count, your "65," contained a few omitted by Liberty: NY1, a very good station, a half dozen public access stations largely distinguished by soft-core porn and a batch of nut-case self-promoters, and a couple of PPV outlets. Liberty, on the other hand, carries 4 super-stations that you don't. They have been a step ahead of you on nearly every programming service, including the standard service inclusion of Bravo and <u>both</u> Sportschannel outlets. Every expansion over the years at your company has been playing catchup to the competition.

Your description of converter boxes is a sham. Liberty gives every apartment one free box, which is not needed <u>if you choose not to subscribe to premium channels</u>. You charge for every one. After you get through with your shell game description, the fact remains that Time Warner charges more and more and more. I have two sets and no premium channels, for which I pay you more than $30 monthly. I will soon have an outlet in every room of my apartment, for which I will pay $15 per month, <u>gross</u>. I will have just my original remotes from the sets and VCRs themselves. I will be able to use my cable-ready equipment as it was intended, not with the interposition of your equipment, for which I pay and which is designed only to protect <u>you</u> from some imagined bad guys. I don't steal signals. If I wanted your moronic premium channels, I'd pay for them, far more than their worth, as I see it presently.

As to the "additional cable tv facts," they are really too puerile to take seriously. All they really do is underscore the perverse greed exhibited by Time Warner from the day you became enfranchised in Manhattan.

As you have seen, Liberty came into our building and in a matter of a few weeks enrolled well over the minimum number we had contractually promised them to commence the service. The one thing we have offered our residents is choice. Time Warner plainly didn't believe in it until challenged. It reminds me of a few years ago when TW dragged its heels on upgraded technology, until the franchise came up for renewal, when they suddenly became true believers. It also reminds me of the full year in which your legal department dragged its heels on signing the installation agreement for your "upgraded" wiring, because we chose to have our building our way, not the meataxe decoration process made infamous in your previous work in our building.

I shall not detail the "extras" that our added cable television provider has and will be giving to its subscribers. Suffice to say, we will not be nickel-and-dime-ed with the five-and-ten-item monthly bills by which TW has turned cable television into a deciphering contest.

Eleven Riverside Drive Corporation has borne TW no ill will, past or present. We don't consider ourselves a sore winner, merely a winner by the free exercise choice in a competitive atmosphere. We have hopes that TW will not be a sore loser in that arena. Your letter lends me no encouragement in those hopes.

Sincerely yours,

Daniel F. Tritter

DFT:lk

VI. **Time Warner Has Used The Judicial Process To Frustrate Competition From Liberty.**

Aside from the above-described physical barriers which Liberty faces in accessing the cable inside wiring in many MDUs, Liberty's competitors have used the judicial process to intimidate potential Liberty customers. Time Warner claims, erroneously, that Liberty "often misappropriates" Time Warner's wires. The truth is that Time Warner frequently claims ownership and control over wires it does not own and then files multimillion dollar lawsuits over that wiring in a baseless attempt to scare away Liberty's customers. Set forth below are a few such examples.

- **Paragon Cable Manhattan v. 180 Tenants Corporation and Douglas Elliman-Gibbons & Ives, Inc.**, Supreme Court of the State of New York, County of New York, Index No. 6952/92. Time Warner sued this 155 unit co-op for over $1 million in damages when the co-op signed a contract with Liberty. Time Warner claimed exclusive control over the building's (not Time Warner's) master antenna system ("MATV") even though Time Warner's New York City franchise and state law prohibits such exclusivity. All of the building's residents wanted to switch to Liberty. The co-op had to solicit the intervention and mediation of the New York State Commission on Cable Television which encouraged Time Warner to relinquish control of the MATV, construct its own separate system to the co-op's aesthetic specifications and dismiss its damage claims. Liberty's service was delayed eight months while this settlement was concluded. During that time, other co-op boards believed they would suffer the same fate as 180 East End Avenue if they signed up with Liberty.

- **Manhattan Cable Television, Inc. v. Fifty-First Beekman Corp.**, Supreme Court of the State of New York, County of New York, Index No. 92-16790. Time Warner sued this 109 unit co-op for over $1 million in damages when the co-op signed a contract with Liberty. This action came three months after the 180 Tenants Corp. lawsuit was filed. As with 180 Tenants Corp., Time Warner claimed exclusive control over the building's MATV. Liberty built a second, parallel system in the MATV conduits and the co-op produced, in court, signed statements from 100% of the building's full time residents asking to switch from Time Warner to Liberty. The court dismissed Time Warner's lawsuit but Liberty's service was still delayed four months while the second system was constructed and the court papers prepared and filed. Again, during that time, other co-

op boards believed they would suffer the same fate as Fifty-First Beekman if they signed up with Liberty.

- **In the Matter of the Application of Manhattan Cable Television, Inc. to Obtain Disclosure of the Board of Managers of the Horizon Condominium and Liberty Cable Company, Inc. to Aid in Bringing an Action Against The Board of Managers of the Horizon Condominium**, Supreme Court of the State of New York, County of New York, Index No. 12828/92. Time Warner sued this 441 unit condominium when it learned that the board was negotiating with Liberty. Time Warner took the position that it owned all the Individual Lines in the conduits running from the stairwells to the dwelling units. The condominium responded by showing that the condominium owned the conduits used by the Individual Lines. the condominium demanded that Time Warner remove "its" wire from those conduits so Liberty could install a new wire. The dispute was resolved by the condominium, Liberty and Time Warner agreeing that Liberty and Time Warner could both use the Individual Lines to serve their individual subscribers. A copy of that agreement is attached as Exhibit B. The agreement shows that Time Warner can, as a practical and operational matter, easily share the use of Individual Lines -- even long ones in concealed conduits -- when it wants to. But Time Warner has, since entering into this sharing agreement, sought to negotiate agreements with other building owners that would give Time Warner exclusive use of the conduits. Liberty has complained about this practice to the New York City franchising authority. A copy of Liberty's complaint to the New York City Department of Telecommunications and Energy is attached as Exhibit C.

- **Paragon Cable Manhattan v. P & S 95th Street Associates and Milstein Properties Corp.**, Supreme Court of the State of New York, New York County, Index No. 130734/93. Time Warner sued the owners of this 280 unit apartment building for over $1 million in damages claiming that the owners (who also have an interest in Liberty) conspired with Liberty to misappropriate the Individual Lines. The original electrician's contract for the building shows that the entire cable TV system for the building was installed by the owner's electrician at the owner's expense. Time Warner nonetheless claims ownership of all cable television wire in the building and has been sabotaging and cutting Individual Lines to prevent Liberty from using them. Liberty expects that Time Warner will soon be asking a New York State court to adopt Time Warner's

wallplate demarcation point under the existing cable home wiring rules.

- **10 West 66th Street Corporation v. Manhattan Cable Television, Inc.**, Supreme Court of the State of New York, County of New York, Index No. 10407/92. This action was started by a 279 unit co-op seeking to enjoin Time Warner from interfering with the upgrade of the building's MATV so Liberty could provide service. Time Warner responded by claiming ownership over vaguely defined "facilities" and asserting a $1 million counterclaim for the co-op's interference with these "facilities." This case is still pending.

- **Manhattan Cable Television v. 35 Park Avenue Corp., WPG Residential, Inc. and Williamson, Picket, Gross, Inc.**, Supreme Court of the State of New York, County of New York, Index No. 23339/92. Time Warner sued this 145 unit co-op for over $1 million in damages after the co-op signed a contract with Liberty. The complaint was patterned on the 180 Tenants Corp. and Fifty-First Beekman Corp. complaints. This case is still pending.

The above-described Time Warner suits and counter-suits are bizarre examples of a supplier litigating with its customers to prevent the customer's election to do business with a competitor. This terror tactic will stop if the Commission adopts Liberty's demarcation point for MDU cable home wiring. A demarcation point where an Individual Line meets the Common Lines will moot any "ownership" dispute over Individual Lines. But Time Warner's litigation threat will only get worse if the Commission adopts the Time Warner demarcation point because ownership of Individual Lines beyond the wallplate will remain an open issue to be determined state by state under the common law of fixtures.

* * * * *

PARAGON
CABLE
MANHATTAN

January 23, 1995

Ms. Pat Ligori
245 East 93rd Street
Apt. #8A
New York, NY 10128

RE: Cable Wiring

Dear Ms. Ligori:

Please be advised that pursuit to an agreement dated July 29, 1992 (the "Agreement") between 245 East 93rd Street, New York, New York (the "Building") and Paragon Cable Manhattan ("Paragon"), Paragon constructed and installed a cable television system in the Building. Under paragraph 8 of the Agreement, Paragon owns and controls the cable television system, cables, equipment and the cable services provided at the Building. The agreement also provides in paragraph 5 that "neither the Owner nor its Agent nor anyone acting by or under the authority of either of them shall tamper with, make any alterations to, or remove, or knowingly permit anyone not authorized by [Paragon]" to so interfere with Paragon's cable television system, equipment and/or services at the Building.

I have attached a copy of the Agreement for your information. If you have any questions, I can be reached at (212) 304-3107.

Sincerely

Steven Chatman
Manager, Special Markets

cc: S. Daniels
G. Warren-Merrick

(OVER→)

Franchised by the City of New York
5120 Broadway, New York, N.Y. 10034

Address of Premises 215-47 East 93rd Street
Block # 1519
Residential Units
Commercial Units
Owner
Owner's Address
Agent Kreisel Co., Inc.
Agent's Address 111 Madison Avenue, NY, NY 10017

July [redacted], 1993

(Owner) (Agent on behalf of Owner) and Paragon Cable Manhattan ("Cable Co.") in consideration of the one-time payment of One Dollar ($1.00), [redacted] by Cable Co. to Owner, receipt of which is hereby acknowledged, and other good and valuable consideration, agree as follows:

1. Cable Company may install, maintain, remove, replace, and/or [redacted] wires, conduits, cables, amplifiers, converters, power supplies [redacted] appurtenant devices (the "Equipment") into, out of, across, thro[redacted], over, or under the buildings, fences, walls and other structures [redacted] located at the above-described Premises, for the purpose of provi[redacted] service to Customers in accordance with the terms of its franchise and the applicable provisions of State, Federal, and local law.

2. Owner shall provide Cable Co. with access to the Premises for [redacted] purpose of doing such work as may be required under Paragraph 1 above.

3. Cable Co. shall perform all work hereunder with reasonable [redacted] be responsible for any damage to the Premises resulting from such [redacted] Cable Co. will provide, at the request of (Owner) (Agent), a certificate of [redacted] insurance covering Cable Co. against bodily injury/property damage liability with limits of single occurrence $1,000,000.00, and statutory Workers' Compensation covering employees of Cable Co.

4. Any and all costs involved in the installation and maintenance of the Equipment shall be borne by Cable Co.

5. Neither the Owner nor the Agent nor anyone acting by or under the authority of either of them shall tamper with, make any alterations to, or remove, or knowingly permit anyone not authorized by Cable Co. to tamper with, make any alterations to, or remove any Equipment and/or converters except with the prior consent of Cable Co.

6. This Agreement shall be subject to the laws of the United States, the State and City of New York and the orders, rules and regulations of the New York State Commission on Cable Television, and nothing herein contained shall constitute a waiver by Cable Co. or Owner of any rights they may have under these laws or any other laws or regulations affecting the installation, operation, or removal of cable television facilities or service.

7. Agent represents that Agent has the authority to act on behalf of Owner in entering into this Agreement and that the Owner is bound hereby.

8. All Equipment (including, without limitation, cables, amplifiers, converters and power supplies) installed or supplied by Cable Co. pursuant this Agreement or in connection herewith shall, as between Cable Co. and Owner, remain the property of Cable Co., and nothing herein shall be deemed to create any property interest therein in Owner or any other person.

9. This Agreement constitutes the entire Agreement between the parties hereto and supersedes all previous agreements, promises, proposals, representations, understandings and negotiations, whether written or oral, between the parties respecting the subject matter hereof.

This Agreement shall apply to and bind the heirs, executors, [redacted]inistrators or successors and assigns of the parties hereto.

[redacted]N CABLE MANHATTAN

By: [redacted]
Its: [redacted]

KREISEL CO., INC.

[redacted]
Owner/Agent

[redacted]

Feb. 14, 1995 11:08AM [redacted]

Dear Neighbors:

Recently, all of us received a letter from a current member of the Astor Terrace Board of Managers stating his reasons for wanting to switch to Liberty Cable.

As with any long term contract, many of us require a reasonable amount of information before we can decide what's best for our individual units. For this reason, I offer the following, none of which was included in the letter mentioned above.

*1. **Allowing Liberty Cable to collect Paragon's equipment and install Liberty service on existing Paragon wires puts us at risk of a lawsuit.*** Paragon and Liberty currently are in court over this very issue. Paragon is planning to take action directly against some of the properties that allowed Liberty to proceed with this type of installation. (See attachements)

Liberty is not permitted to use Paragon's existing cables, including those which run from the walls in our apartments to the backs of our VCR's and televisions. Liberty must install their own cables in both the hallways and the apartments. If you think this will be easy, take a look at all of your television sets and follow the cables until you reach the walls to which they connect.

*2. **There is no way you will "save" $275.00 per year by switching to Liberty.*** Why?
The "savings" quoted in the letter we received is based on 100% of Astor Terrace units committing to Liberty service. This is unrealistic. Currently, there are 38 units (14% of total) that do not subscribe to cable at all. Add to that the units that elect to remain with Paragon for any number of reasons, including perceiving value in News 1 NY (Ch.1), or City Government Channel and CUNY Educational programs, both of which are carried on public access channels. The opportunity for "savings" is further reduced if you are one of the 106 Astor Terrace units with Premium service.

*3. **Your neighbor's "savings" might come at your expense.***
The Astor Terrace Board of Managers can at any time decide to apportion the cost of Liberty's Bulk service to all unit owners, even those who do not choose to subscribe. In this instance, the "savings" realized by Liberty subscribers results from being subsidized by non-subscribing neighbors. Why would you want to pay for your neighbors' cable service? Is the Board willing to sign a five-year agreement that confines the cost of service to only those who subscribe?

*4. **You risk paying more with a Bulk Rate Service.*** How?
If you are one of the many owners who rent their Astor Terrace units, you must continue to pay for Liberty service even though your unit might be vacant. If your renter loses, damages, or inadvertently takes the converter box or remote control with them when they move out, you are responsible. You pay for the missing equipment if you fail to collect it from your former tenants. Similarly, if a unit owner leaves with the equipment, the Astor Terrace Condominium will be left with the bill. (Converters cost $175.00+; remote control devices about $15.00. Do you really have the time or desire to police your unit each time a tenant moves out?)

(Over)

Billing for Liberty's Basic service would be done by Kreisel, with cable fees appended to your regular monthly common charges bill. Please consider what would happen should several units, for reasons unrelated to cable service, withhold their monthly payments or fall into arrears. The Liberty fee must still be paid. Who makes up the difference? Does the Astor Terrace reserve fund get tapped to pay for cable? If you happen to be the owner withholding payment of common charges for what may be valid reasons, consider that your cable service could be suspended against your wishes.

5. The technology for delivering programming to homes and apartments is changing rapidly, as are government regulations about who can provide us those programs (networks, cable franchises or telephone companies.) ***Five years - even two years - is too long to be tied to <u>any</u> provider of this type of service.***

6. The differences between Liberty and Paragon are many, and should be considered before making your decision. For example:

Are you able to "lock" channels so children will not have access to the adult programs carried on both Liberty and Paragon?
How are Pay Per View programs ordered? (Liberty by telephone; Paragon by remote control)
What are the systems' Interactive capabilities? (The Sega Game Channel will launch soon; you can "try before you buy" expensive video games by downloading to a PC. Which service will carry this?)
Will the system you choose have channel capacity for additional program services. (The History Channel and Golf Channel were recently launched; the Racing Channel is expected soon.)

In closing, please know that I am not a Paragon loyalist writing to dissuade you from a 5-year contract with Liberty Cable. I write to you as an Astor Terrace loyalist who was in attendance at the January 17, 1995 Board meeting when the issue of Liberty Cable was discussed. Several of the board members discussing the feasibility of a Liberty installation were, in my opinion, uninformed, ill-informed, or both*. I base my opinion on the fact that I have spent 20 years in the broadcasting industry, routinely dealing with cable, new technologies and the regulations that govern them.

Pat Liguori
Unit Owner, 8A

* See attached agreement between Paragon & Astor Terrace. Also note: Bravo now is part of Paragon's Basic Service; effective 3/1/95, SportsChannel becomes part of Standard tier (you no longer pay a premium); Sci-Fi Channel on Standard tier effective 3/1/95. Feel free to contact Paragon directly at (212) 304-3107. Ask for Steve Chatman.

May 1995
WTB

LICENSING PROCEDURE FOR FIXED MICROWAVE SERVICES

Section 309 of the Communications Act of 1934 (47 U.S.C. §309) is amended by deleting subparagraph (b)(2)(A) and by redesignating remaining subparagraphs (b)(2)(B) through (b)(2)(G) as subparagraphs (b)(2)(A) through (b)(2)(F), respectively.

Explanation

This amendment would alter the applications procedure for the fixed point-to-point microwave services. Currently, such applications are among those that must be placed on public notice for at least 30 days prior to grant, during which time other parties may file petitions to deny. This procedure delays the processing of all private microwave applications. Eliminating the 30-day requirement would significantly increase the efficiency of the licensing process. While this amendment would preclude petitions to deny from being filed, elimination of this procedure would not harm the public interest. Very few objections are in fact filed against these applications and most of them are technical in nature. Such objections can adequately be handled under the Commission's existing procedures for seeking reconsideration. The amendment would also make the processing of private microwave applications consistent with the processing of other private radio applications, which are not subject to the 30-day notice requirement.

3. An action to recover a forfeiture under subdivisions one or two of this section may be brought at any time within one year after the cause of action accrues, in any court of competent jurisdiction in this state, in the name of the people of the state of New York, on the relation of the commission. In any such action all forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture. All monies recovered in any such action, together with the costs thereof, shall be paid into the state treasury to the credit of the general fund.

Added L.1974, c. 441, § 1; amended L.1974, c. 442, § 1.

Historical Note

Subd. 3. Amended L.1974, c. 442, § 1, eff. on the 60th day after May 23, 1974, by striking out provisions which required actions to recover forfeitures to be commenced and prosecuted by counsel to the commission.

Effective Date. Section effective on the 60th day after May 23, 1974, pursuant to L.1974, c. 441, § 2.

§ 828. Landlord-tenant relationship

1. No landlord shall

a. interfere with the installation of cable television facilities upon his property or premises, except that a landlord may require:

i. that the installation of cable television facilities conform to such reasonable conditions as are necessary to protect the safety, functioning and appearance of the premises, and the convenience and well-being of other tenants;

ii. that the cable television company or the tenant or a combination thereof bear the entire cost of the installation, operation or removal of such facilities; and

iii. that the cable television company agree to indemnify the landlord for any damage caused by the installation, operation or removal of such facilities.

b. demand or accept payment from any tenant, in any form, in exchange for permitting cable television service on or within his property or premises, or from any cable television company in exchange therefor in excess of any amount which the commission shall, by regulation, determine to be reasonable; or

c. discriminate in rental charges, or otherwise, between tenants who receive cable television service and those who do not.

2. Rental agreements and leases executed prior to the effective date of this article may be enforced notwithstanding this section.

3. No cable television company may enter into any agreement with the owners, lessees or persons controlling or managing buildings served by a cable television, or do or permit any act, that would have the effect, directly or indirectly of diminishing or interfering with existing rights of any tenant or other occupant of such building to use or avail himself of master or individual antenna equipment.

Added L.1972, c. 466, § 1; amended L.1972, c. 467, § 7; L.1979, c. 479, § 1.

Historical Note

Subd. 1, par. a. Amended L.1979, c. 479, § 1, eff. July 5, 1979, in subpar. iii, by deleting "and the tenant" following "company."

Subd. 1, par. b. Amended L.1972, c. 467, § 7, eff. Jan. 1, 1973, by inserting "from any tenant" and "or from any cable television company in exchange therefor in excess of any amount which the commission shall, by regulation, determine to be reasonable."

Effective Date. Section effective Jan. 1, 1973, pursuant to L.1972, c. 466, § 5, formerly 4, renumbered 5 and amended, L.1972, c. 467, § 8.

New York Codes, Rules and Regulations

Applications by landlords pursuant to subdivision 1(b) of this section, see 9 NYCRR Part 598.

Notes of Decisions

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1. Constitutionality

This section barring landlords from interfering with installation of cable television facilities upon their property and limiting payment for such use of their property to amount awarded by Commission was a valid exercise of the police power of state, rather than an impermissible taking. Loretto v. Teleprompter Manhattan CATV Corp., 1981, 53 N.Y.2d 124, 440 N.Y.S.2d 843, 423 N.E.2d 320, probabl jurisdiction noted 102 S.Ct. 472.

This section barring landlords from interfering with the installation of cable television facilities upon their property and limiting payment for such use of their property to the amount awarded by the Commission was reasonable and justifiable exercise of police power of state both with respect to cable television components placed directly on premises serviced by cable television and premises on which equipment is placed to service another building. Loretto v. Teleprompter Manhattan CATV Corp., 1979, 98 Misc.2d 944, 415 N.Y.S.2d 180, affirmed 422 N.Y.S.2d 550, affirmed 53 N.Y.2d 124, 440 N.Y.S.2d 843, 423 N.E.2d 320.

2. Purpose

This section barring landlords from interfering with installation of cable

CS 95-61
LIBERTY CABLE

Attachment A

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

o An oversize page or document (such as a map) which was too large to be scanned into the RIPS system.

✔ Microfilm, microform, certain photographs or videotape.

o Other materials which, for one reason or another, could not be scanned into the RIPS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.